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Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From:
Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Extension: Rule 204

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 204 (17 CFR 242.204), under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in the equity security, the participant shall, by no later than the beginning of regular trading hours on the applicable close-out date, immediately close out its fail to deliver positions by borrowing or purchasing securities of like kind and quantity. For a short sale transaction, the participant must close out a fail to deliver by no later than the beginning of regular trading hours on the settlement day following the settlement date. If a participant has a fail to deliver that the participant can demonstrate on its books and records resulted from a long sale, or that is attributable to bona-fide market making activities, the participant must close out the fail to deliver by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Rule 204 is intended to help further the Commission’s goal of

reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission's goal of addressing potentially abusive "naked" short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization ("SRO") examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a "collection of information" within the meaning of the Paperwork Reduction Act.

- I. Allocation Notification Requirement: As of December 31, 2020, there were 3,551 registered broker-dealers.¹ Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a participant allocates a fail to deliver position to a broker or dealer pursuant to Rule 204(d), the broker or dealer that has been allocated the fail to deliver position in an equity security must determine whether such fail to deliver position was closed out in accordance with Rule 204(a). If such broker or dealer does not comply with the provisions of Rule 204(a), such broker or dealer must immediately notify the participant that it has become subject to the requirements of Rule 204(b). The Commission estimates that a broker or dealer could have to make such determination and notification

¹ The Commission's Division of Economic and Risk Analysis ("DERA") estimates that there were approximately 3,551 registered broker-dealers as of December 31, 2020.

with respect to approximately 2.1 equity securities per day.² The Commission estimates a total of 1,886,646 potential notifications in accordance with Rule 204(d) across all registered broker-dealers that could be allocated responsibility to close out a fail to deliver position per year (3,551 registered broker-dealers notifying participants once per day³ on 2.1 equity securities, multiplied by 253 trading days in 2020). The total estimated annual burden hours per year will be approximately 301,864 burden hours (1,886,646 multiplied by 0.16 hours/notification⁴).

- II. Demonstration Requirement for Fails to Deliver on Long Sales: As of December 31, 2020, there were 127 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determined that such fail to deliver position resulted from a long sale, the Commission estimates that a participant of a registered clearing agency will have to make such determination with respect to approximately 29 securities per day.⁵ The Commission estimates a total of 931,799 potential demonstrations in accordance

² DERA estimates that there were approximately 7,450 average daily fail to deliver positions during 2020. Across 3,551 registered broker-dealers, the number of securities per registered broker-dealer per trading day is approximately 2.1 ($7,450 \div 3,551$) equity securities.

³ Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, the Commission believes that a broker or dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

⁴ See Amendments to Regulation SHO, Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38265 (July 31, 2009) (“Rule 204 Adopting Release”) (making permanent the amendments to Regulation SHO contained in Interim Final Temporary Rule 204T and incorporating by reference the time estimates from the Rule 204T Adopting Release for compliance with the notification, demonstration, and certification requirements of Rule 204).

⁵ DERA estimates that during 20120 approximately 49.2% of trade volume was long. DERA estimates that there were approximately 7,450 average daily fail to deliver positions during 2020. Across 127 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 59 ($7,450 \div 127$) equity securities. 49.2% of 59 equity securities per trading day equals approximately 29 securities per day.

with Rule 204(a)(1) across all broker-dealer participants per year (127 participants checking for compliance once per day on 29 securities, multiplied by 253 trading days in 2020). The total approximate estimated annual burden hour per year will be approximately 149,088 burden hours (931,799 multiplied by 0.16 hours/demonstration⁶).

III. Pre-Borrow Notification Requirement: As of December 31, 2020, there were 27 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security, the participant must determine whether the fail to deliver position was closed out in accordance with Rule 204(a). The Commission estimates that a participant of a registered clearing agency will have to make such determination with respect to approximately 59 equity securities per day.⁷ The Commission estimates a total of 1,895,729 potential notifications in accordance with Rule 204(c) across all participants per year (127 broker-dealer participants notifying broker-dealers once per day on 59 securities, multiplied by 253 trading days in 2020). The total estimated annual burden hours per year will be approximately 303,317 burden hours (1,895,729 multiplied by 0.16 hours/notification⁸).

IV. Certification Requirement: As of December 31, 2020, there were 3,551 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. If the broker-dealer determines that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at

⁶ See supra note 4.

⁷ See supra note 5.

⁸ See supra note 4.

a registered clearing agency or has purchased or borrowed securities in accordance with the pre-fail credit provision of Rule 204(e), the Commission estimates that a broker-dealer could have to make such determination with respect to approximately 2.1 securities per day.⁹ The Commission estimates that each such registered broker-dealer could have to certify to a participant that the broker-dealer has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that the broker-dealer is in compliance with the requirements set forth in the pre-fail credit provision of Rule 204(e), 1,886,646 times per year (3,551 registered broker-dealers certifying once per day on 2.1 securities, multiplied by 253 trading days in 2020). The total approximate estimated annual burden hours per year will be approximately 301,864 burden hours (1,886,646 multiplied by 0.16 hours/certification¹⁰).

- V. Pre-Fail Credit Demonstration Requirement: As of December 31, 2020, there were 3,551 registered broker-dealers. If a broker-dealer purchased or borrowed securities in accordance with the conditions specified in Rule 204(e) and determined that it had a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit, the Commission estimates that a broker-dealer could have to make such a determination with respect to approximately 2.1 securities per day.¹¹ The Commission estimates that the total number of times per year that such registered broker-dealers could have to

⁹ See supra note 2.

¹⁰ See supra note 4.

¹¹ See supra note 2.

demonstrate on their respective books and records that the broker-dealer has a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit is 1,886,646 times per year (3,551 registered broker-dealers checking for compliance once per day on 2.1 equity securities, multiplied by 253 trading days in 2020). The total approximate estimated annual burden hours per year will be 301,864 burden hours (1,886,646 multiplied by 0.16 hours/demonstration¹²).

The total aggregate annual burden for the collection of information undertaken pursuant to all five provisions is thus 1,357,997 hours per year (301,864 + 149,088 + 303,317 + 301,864 + 301,864).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to

(i) MBX.OMB.OIRA.SEC_desk_officer@OMB.EOP.GOV and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE, Washington, DC 20549, or by sending an e-mail to: PRA_Mailbox@sec.gov.

¹² See supra note 4.

J. Matthew DeLesDernier
Assistant Secretary

January 14, 2022

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